



December 16, 2008

**SUBJECT: CONSIDERATION OF IMPACTS OF ACTIVE MILITARY DUTY FOR COUNCILMEMBER LEE – LEGAL ISSUES, STATUS OF COUNCIL SEAT, CONTINUATION OF SALARY AND BENEFITS, OPTIONS FOR APPOINTMENT OF INTERIM COUNCILMEMBER**

**REPORT IN BRIEF**

Councilmember Otto Lee has been ordered by the United States Navy to report to active military duty on January 2, 2009.

Councilmember Lee's activation to military duty raises a number of legal and practical questions – does Councilmember Lee have a legal right to return to his Council seat after completion of active duty; can the Council appoint an interim replacement for Councilmember Lee's seat while he is on active duty; and what is the status of Councilmember Lee's salary and benefits while he is on active duty?

The Mayor placed consideration of the legal issues, impacts and options resulting from Councilmember Lee's assignment to active military duty on the agenda for Council consideration and action.

**BACKGROUND**

Councilmember Otto Lee has been in the Navy Reserves for approximately 19 years, and as a member of the United States Armed Forces is subject to call-up for active military duty. Councilmember Lee provided verbal notification at the Council meeting on December 2, 2008 that the Navy is ordering him to report for active duty. On December 8, 2008, he provided a memo to the Council and City Manager stating that his active duty starts on January 2, 2009 and extends for a period of 360 days "Boots On Ground" in Iraq. Councilmember Lee states that he does not know his exact return date from Iraq but estimates it to be February 2010. He requests his Council Seat #5 be subject to an interim appointment during his military leave and states his intent to return to Council Seat #5 upon the conclusion of active duty. Councilmember Lee does not request Council salary while he is on active military duty and does request continuation of current medical and dental benefits. (Attachment A)

The City Attorney's Office December 9, 2009 Memorandum to the Council and City Manager provides the legal analysis of the status of Councilmember Lee's seat while he is on active military duty and Council options regarding an interim appointment to the council seat. (Attachment B)

The Council adopted Resolution 190-05 (extended through 30, 2009) providing continuation of City salary and medical, dental and vision benefits for employees assigned to active military duty at the same level the employee would have received if not on active military duty. (Attachment C)

### **EXISTING POLICY**

The City Charter, Section 604, provides that if a Councilmember misses all regular meetings for a period of 60 days or more, the seat is deemed vacant unless an excused absence is granted by the Council. This policy is superseded, however, by the California Military and Veteran's Code, Section 395.8 stating that where the absence is based on active military duty, the office shall not be deemed vacant.

California Military and Veteran's Code, Section 395.8 also provides that the legislative body may appoint an officer to temporarily replace an officer absent on active duty with the armed forces.

There is no formal City policy on salary and benefits for employees or Councilmembers on active military duty. In adopting the resolution extending salary and medical benefits for employees on active military duty, the Council stated in the recitals that employees called to mandatory active military duty would suffer a serious economic impact from the loss of employment income and benefits from the City, and the intent of the Council was to minimize the impact a call to active military duty has on affected employees and their dependents.

### **DISCUSSION**

#### **Status of Council Seat #5 During Active Military Leave**

Based on Councilmember Lee's request to hold his seat on the Council while he is on active military leave, Councilmember Lee has the legal right under Military and Veteran's Code Section 395.8 to have the seat not declared vacant and to resume his Council seat when he returns from active military duty for the remainder of his term. If Councilmember Lee's term on the Council expires prior to his return from active duty, there is not a right to resume the seat after the term's expiration.

#### **Council Options for Seat #5 While Councilmember Lee Is On Active Duty**

As discussed in the December 9, 2008 memorandum, the Council has the options of leaving Councilmember Lee's seat unoccupied while he is on active military duty without the seat being declared vacant, or Council may elect to appoint an interim replacement to fill Councilmember Lee's seat on a temporary basis for the duration of his active military leave.

Several procedural options for appointing an interim replacement are discussed in the December 9, 2008 memorandum, and Council may in its discretion elect to choose one of these options or another procedure or method suggested by the Council.

#### Continuation of City Salary and Benefits During Active Military Leave

Councilmember Lee is entitled under the Military and Veteran's Code to 30 days of continued salary and benefits after commencing active military duty.

The Council first adopted extended salary and benefits for City employees on active military duty in October 2001. City employees are eligible for salary to supplement their military pay to the level of current City compensation, and full payment of the medical, dental and vision benefits at the time of active duty deployment. City employees on active military duty can receive this salary and benefits benefit through June 30, 2009 unless extended by additional Council action before that date. The maximum number of pay periods a City employee is eligible for supplemental benefits during active military duty from October 2001 is 86 pay periods, although no employee has used the maximum benefit amount (which would require over 3 years of full-time active military duty).

If the Council wants to provide supplemental salary and/or medical benefits for Councilmembers similar to what is provided for City employees, it must adopt a resolution extending salary and benefits for Councilmembers while on active military duty.

#### **FISCAL IMPACT**

The monthly City contribution for Councilmember Lee's benefits is \$1,510.09 and is fully budgeted in the Benefits fund. Accordingly, there is no projected budget impact from extending benefits during active military leave. In the event the Council elects to appoint an interim replacement for Seat #5, the individual in that office would be entitled to benefits while serving as an interim Councilmember, and there could be an additional budgetary cost if the interim Councilmember elects to enroll in medical, dental and vision coverage through the City.

Councilmember Lee has not requested continuation of his salary while on active military leave, and the City would have salary savings during the period of time he is on active duty. These salary savings would be offset, however, if an interim Councilmember is appointed and paid the regular Council compensation while acting as an interim Councilmember.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety, and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

## **ALTERNATIVES**

1. Formally accept Councilmember Lee's December 8, 2008 Notice of Deployment to active military duty starting January 2, 2009.
2. Find that Councilmember Lee's Seat #5 is not vacant during the period of his assignment to active military duty, pursuant to California Military and Veteran's Code Section 395.8 and that Councilmember Lee is entitled to the legal rights set out in California Military and Veteran's Code Section 395.8.
3. Council elects to appoint an interim replacement for Councilmember Lee during his active military duty pursuant to California Military and Veteran's Code Section 395.8.
4. Council selects a procedure and timetable for selecting an interim replacement for Councilmember Lee during his active military duty pursuant to California Military and Veteran's Code Section 395.8.
5. Council elects to continue Councilmember Lee's benefits at the same level as the time of his deployment to active duty and consistent with the extension of benefits provided to City employees during active military leave, and directs staff to prepare a resolution to that effect.
6. Do not accept Councilmember Lee's December 8, 2008 Notice of Deployment to active military duty starting January 2, 2009.
7. Do not find that Councilmember Lee's Seat #5 is vacant during the period of his assignment to active military duty, pursuant to California Military and Veteran's Code Section 395.8, and that Councilmember Lee is entitled to the legal rights set out in California Military and Veteran's Code Section 395.8.
8. Do not elect to appoint an interim replacement for Councilmember Lee during his active military duty pursuant to California Military and Veteran's Code Section 395.8.
9. Do not select a procedure and timetable for selecting an interim replacement for Councilmember Lee during his active military duty pursuant to California Military and Veteran's Code Section 395.8.
10. Do not elect to continue Councilmember Lee's benefits at the same level as the time of his deployment to active duty and consistent with the extension of benefits provided to City employees during active military leave, and directs staff to prepare a resolution to that effect.
11. As Council deems appropriate, provide acknowledgment and commendation of Councilmember Lee's active military service.

### **RECOMMENDATION**

Staff recommends approval of Alternatives 1 and 2:

Formally accept Councilmember Lee's December 8, 2008 Notice of Deployment to active military duty starting January 2, 2009.

Find that Councilmember Lee's Seat #5 is not vacant during the period of his assignment to active military duty, pursuant to California Military and Veteran's Code Section 395.8, and that Councilmember Lee is entitled to the legal rights set out in California Military and Veteran's Code Section 395.8.

Staff recommends that the Council determine as policy Alternatives 3 through 5 and 8 through 11 on whether to appoint an interim replacement for Council Seat #5, the procedure to follow if the Council elects to appoint an interim replacement, whether to provide a continuation of benefits for a councilmember on active military duty, and the appropriate commendation. Any requested guidance on legal questions will be provided.

Prepared by:

A handwritten signature in black ink, appearing to read 'David Kahn', is written over a horizontal line.

David Kahn, City Attorney

### **Attachments**

Attachment A - Councilmember Lee's Notice of Active Military Duty, December 8, 2008

Attachment B - City Attorney Memorandum On Legal Considerations and Council Options

Attachment C - RTC 08-185 and Resolutions 322-08 and Section 3.550 of Salary Resolution 190-05

December 8, 2008

Memo to Council and City Manager:

According to the official Navy orders, my duty starts on January 2, 2009, for a period of 360 days BOG (boots on the ground) in Iraq. Based on my understanding, I will be in San Diego initially for mobilization briefs, medical exams, etc. and should be able to attend the Council meeting for January 6 by teleconference. I am scheduled to leave for Ft. Jackson, SC for Army combat indoctrination training from Jan 10-30, at which time I may not be able to participate in council meetings. Thereafter I will be enroute to the CENTCOM theater and arrive in Baghdad by February. I do not know my actual return date, as tours may be shortened (as I experienced in 2003), or if stop loss order is given, extended. At this time my best estimate will be Feb 2010.

I would ask that the council seat #5 be held for an interim appointment while I am on military leave. My intent is to resume my position when the active duty assignment ends. During my absence, I should not be receiving council salary. However I hope that the medical and dental benefits for my family be continued so that my wife and young daughters can continue to visit their current doctors.

Respectfully submitted,  
Otto Lee

Otto Lee  
Intellectual Property Law Group LLP  
Sent Via Blackberry



# CITY OF SUNNYVALE

## OFFICE OF THE CITY ATTORNEY

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### MEMORANDUM

TO: Mayor Tony Spitaleri, City Council  
Vice-Mayor Melinda Hamilton  
City Council

COPY TO: Gary Luebbers, City Manager  
Robert Walker, Assistant City Manager

FROM: David Kahn, City Attorney *DEK*  
Nicole Clemens, Law Clerk *nc*

DATE: December 9, 2008

RE: Councilmember Otto Lee Notification Of Active Military Duty  
Legal Considerations and Council Options

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### QUESTIONS

Councilmember Otto Lee advised Council on December 2, 2008, that he received orders to report for active military duty in the Navy Reserves effective January, 2009. What is the status of Councilmember Lee's council seat when he leaves for active military duty? What options does the Council have regarding Councilmember Lee's council seat while he is on active military service?

### EXECUTIVE SUMMARY

While federal, state, and local law address the treatment of an absence due to active military service, state law is dispositive. Under California Military and Veterans Code, a Councilmember's absence due to military service is not considered a vacancy. The Council may appoint an interim replacement for the remainder of the councilmember's term or until the councilmember returns, whichever occurs first. Upon his return, Councilmember Lee is entitled to reinstatement of his position for any remaining time left of his term.



To: City Council  
From: David Kahn, City Attorney  
Nicole Clemens, Law Clerk  
Date: December 9, 2008  
Re: Councilmember Lee's Notification Of Active Military Service  
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## **DISCUSSION AND LEGAL ANALYSIS**

### **1. Facts**

Councilmember Otto Lee was re-elected to serve a second four-year term on the Sunnyvale City Council in November, 2007. His term expires in 2011. Councilmember Lee has served in the United States Naval Reserve for 19 years. He announced verbally at the Council meeting of December 2, 2008, that he has received orders requiring him to report for active duty in Iraq commencing in January, 2009. To date, Councilmember Lee has not submitted formal written notification of his military activation.

### **2. California Military and Veterans Code**

California Military and Veterans Code § 395.8 applies to "any officer, elective or otherwise, who leaves or shall have left the service of any city in order to enter upon active service with the armed forces of the United States" and states that upon discharge from the military, the official "shall be reinstated and restored to his office" for any remaining time left to his term. (emphasis added)

Further, the Military and Veterans Code provides that when a councilmember is absent due to military service, the seat shall not be considered vacant. The council may, however, temporarily appoint a councilmember in the absence of the elected official. The temporary replacement has the same powers and duties as the elected official. Further, the replacement will serve until either the expiration of the elected official's term or the elected official returns from military service, whichever occurs first. Section 395.8 in relevant part states:

The office from which such officer absents himself to enter upon active service with the armed forces shall not be considered to be vacant but the legislative body or other appointing authority, as the case may be, may appoint an officer to temporarily replace any such officer so absenting himself to enter upon active service with the armed forces. Such temporary officers shall have all of the powers and duties of the office to which he may be temporarily appointed and shall hold said office until the expiration of the term thereof or until the officer returns from service with the armed forces, whichever event first occurs. (Emphasis added.)

Therefore, if Councilmember Lee is absent due to military service, Council cannot treat his absence as a vacancy and upon Councilmember Lee's return, shall be reinstated to his elected position for any of his unexpired term. Council maintains discretion, however, to appoint a temporary replacement.





To: City Council  
From: David Kahn, City Attorney  
Nicole Clemens, Law Clerk  
Date: December 9, 2008  
Re: Councilmember Lee's Notification Of Active Military Service  
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In addition, in the event that Councilmember Lee resigns from his office, pursuant to Military and Veterans Code § 395.3, Councilmember Lee would have the right to reemployment of office when he returns from military service if his term of office would not have ended but for his resignation.

## **2. Application of Federal and Local Law**

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)<sup>1</sup> provides that permanent employees who leave employment for military service are entitled to reemployment upon return from duty. However, the City of Sunnyvale has consistently taken the position pursuant to California case law and legal guidance that councilmembers are not "employees." Therefore, USERRA would not apply to Councilmember Lee's absence for military service.

The City Charter also addresses a councilmember's absence. City Charter Section 604 provides that Council can handle a councilmember's absence in two ways: as a permitted absence or as a vacancy. If a councilmember is absent from all regular meetings for a period of 60 days, the absence is deemed a vacancy unless the Council grants permission for the absence. Alternatively, a vacancy is created when either a councilmember is not granted a permitted absence, or if the councilmember resigns from office. However, Section 604 is superseded by state law when the absence is due to a leave for military service.<sup>2</sup> Although the City Charter does not provide for temporary replacements, the Military and Veterans Code permits such in the event of a military absence. Therefore, Councilmember Lee's absence cannot be treated as a vacancy unless he were to submit a permanent resignation from office stating that he was waiving any right of reinstatement under the Military and Veteran's Code.

## **3. Process to Appoint an Interim Replacement**

During Councilmember Lee's absence for active military duty, the Council can (but is not required to) elect to appoint an interim replacement for the remainder of his term or until he returns, whichever occurs first. The City Charter recognizes that "all powers of the City shall be vested in the City Council" and this includes the "power to make and enforce all laws and regulations in respect to municipal affairs."<sup>3</sup> Therefore, Council has the authority, as the City's legislative body, to appoint an interim replacement. Common considerations for a Council in determining whether to appoint a temporary replacement include the length of absence, projected workload of the Council and continuity of full number of Council members to avoid tie votes with no possibility of breaking tie votes.

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<sup>1</sup> 38 U.S.C. 4301 et seq.

<sup>2</sup> See *Bowers v. City of San Buenaventura*, 75 Cal. App. 3d 65 (Cal. App. 2 Dist. 1977), holding that the California Military and Veterans Code provisions supersede city charters.

<sup>3</sup> Sunnyvale Charter, Article VI Section 607 and Art. IV Section 400.



To: City Council  
From: David Kahn, City Attorney  
Nicole Clemens, Law Clerk  
Date: December 9, 2008  
Re: Councilmember Lee's Notification Of Active Military Service  
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If the Council elects to move forward on appointing an interim replacement for Councilmember Lee, Council may consider the following procedural options as well as any other procedural options that the Council may develop and approve:

1. Council could appoint a Council subcommittee to search, and make recommendations in a public session;
2. Council could appoint a blue ribbon panel of Councilmembers and community members to search, and make recommendations in a public session; or
3. Council could receive applications during an open application period, interview all candidates subject to the Brown Act, and make a selection in a public session.

The interim replacement selected would serve with the same duties and powers and benefits under the Charter as Councilmember Lee until either the expiration of Councilmember Lee's term or Councilmember Lee returns from military service, whichever occurs first.

### RECOMMENDATION

Under the California Military and Veteran's Code, Councilmember Lee's seat is not considered vacant when he leaves for active military duty in January, 2009. Councilmember Lee has the right to return to his Council seat upon his discharge from active duty, provided that his term has not expired. The Council has the authority, in its discretion, to appoint an interim replacement and, if a replacement is desired, to determine the method by which Council makes such an appointment.

Staff makes no recommendation on whether or not the Council should appoint an interim replacement for Councilmember Lee while he is on active duty. The next action step, in the event that the Council wants to discuss whether or not to appoint a temporary replacement for Councilmember Lee, and the method in which this would be done, would be for the Mayor or the Council, by majority vote, to place the consideration of a temporary replacement on a regular meeting agenda for consideration.

DEK/NC:sam

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**Council Meeting: June 10, 2008****SUBJECT: Amendment to the Salary Resolution - Military Reservist  
Extension of Benefits and Supplemental Salary****REPORT IN BRIEF**

This report recommends approval of a twenty-six pay period extension of military leave benefits and supplemental salary through June 30, 2009 for eligible employees who are current United States military reservists. Council previously approved a maximum of sixty pay periods of benefits for each employee through the end of June 2008.

This action would continue the extended benefits and supplemental salary for mandatory active duty per Executive Order 13223 issued on September 14, 2001 and to any involuntary extension related to the same Order. In addition, it would extend coverage of the military leave benefits and supplemental salary for an additional twenty six pay periods.

The City has a total of seven employees who are currently military reservists. Five of these employees have received supplemental pay and benefits for periods ranging from two to thirty-six pay periods. Currently, there is one employee eligible for supplemental benefits.

To fund this proposal, it is recommended that the unspent FY 2007/2008 Military Reservist Leave Budget, estimated at \$268,055, be carried over to FY 2008/2009. These funds, as well as the regular military leave budget for 2008/2009, are expected to be sufficient to fund the twenty-six pay period extension in benefits and supplemental salary for those military reservists who may be called to active duty.

**BACKGROUND**

The Council first adopted extended military benefits and supplemental salary in October 2001. Extensions were approved in April 2003, May 2004, June 2005, June 2006 and May 2007. The purpose of the Council's action is to minimize the impact of a call to active duty on these City employees and their families because of the unusual length of mandatory military service that would deprive them of full-time employment income and benefits.

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**Issued by the City Manager**

### **EXISTING POLICY**

Current policy exceeds the requirements of state law (Military and Veteran's Code, Section 395), the 1994 Uniformed Services Employment and Reemployment Rights Act (USERRA), the Veterans Benefits Improvement Act of 2004 (VBIA), and the final VBIA rule in March 10, 2005.

Existing City policy provides continuation of City benefits and supplemental salary for qualified individuals for a period of up to sixty pay periods beyond those required by current State law. Funding for the current program expires on June 30, 2008.

### **DISCUSSION**

It is recommended that military leave benefits and supplemental salary be extended for an additional twenty-six pay periods for employees who may be involuntarily recalled to active duty through June 30, 2009. The employees will continue to reimburse the City the amounts received for military service plus allowances, including the Basic Allowance for Housing (BAH). The mandatory active duty eligibility requirements remain the same as stated in the Report to Council 06-196 approved on June 13, 2006.

Those who elect not to return to City employment would be required to repay the City for the cost of benefits and supplemental salary exceeding those required by law, plus interest at the 26-week Treasury bill rate. The City Manager will have the discretion to not require repayment in the event of an employee's death or disability as a result of active military duty.

#### **Supplemental Salary**

The City will provide or continue to provide base salary, plus any other compensation the employee would have received had he/she been actively working.

#### **Benefits**

The City's contribution and employee's deductions toward applicable benefits (retirement, medical, dental, dental premiums to PSOA, vision and the Employee Assistance Program) will continue as if the employee was actively working. Life insurance coverage, short-term disability coverage and long term disability coverage cease upon deployment or redeployment to active military duty.

### **FISCAL IMPACT**

To fund this proposal, it is recommended that the unspent FY 2007/2008 Military Reservist Leave Budget, estimated at \$268,055, be carried over to FY 2008/2009. This amount, along with the regular military leave for FY 2008/2009, is expected to be sufficient to fund the 26 pay period extension. Under the unlikely scenario, in which all seven employees are deployed in July 2008, additional funds could be required. However, adequate funds will likely be available through salary savings from the operating programs where the reservists are budgeted. These positions are typically backfilled at a lower salary rate through use of overtime or temporary personnel or not backfilled during all or part of the military reservists' leave period.

If additional funds are needed, this item will return to City Council for further consideration. Unspent funds will be returned to the Employee Benefits Fund and General Fund, where the funds originated, at the end of FY 2008/2009.

### **CONCLUSION**

Council approval of this recommendation will continue to provide City benefits and supplemental salary to eligible employees through June 30, 2009.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

### **ALTERNATIVES**

1. That the City Council adopt a Resolution to extend benefits and supplemental salary through June 30, 2009. The extension will be funded by carrying over the remaining unspent FY 2007/2008 Military Reservist Leave Budget estimated at \$268,055 to the FY 2008/2009 budget, and appropriating salary savings in the operating programs where the reservists are budgeted. Unspent funds will be returned to the Employee Benefits Fund and General Fund at the end of FY 2008/2009.
2. That the City Council does not adopt a Resolution to extend the current military benefits and supplemental salary beyond June 30, 2008.
3. The City Council modifies any portion of this recommendation.

**RECOMMENDATION**

1. Staff recommends approval of Alternative #1: That the City Council adopt a Resolution to extend benefits and supplemental salary through June 30, 2009. The extension will be funded by carrying over the remaining unspent FY 2007/2008 Military Reservist Leave Budget estimated at \$268,055 to the FY 2008/2009 budget, and appropriating salary savings in the operating programs where the reservists are budgeted. Unspent funds will be returned to the Employee Benefits Fund and General Fund at the end of FY 2008/2009.

Reviewed by:

Erwin Young, Director of Human Resources  
Prepared by: Nicole Adamo, Human Resources Analyst

Approved by:

Amy Chan  
City Manager

**Attachments**

- A. Resolution

RESOLUTION NO. 322-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE AMENDING SALARY RESOLUTION  
NO. 190-05, AS AMENDED, TO PROVIDE AN EXTENSION  
OF BENEFITS AND SUPPLEMENTAL SALARY FOR  
ARMED FORCES, NAVAL MILITIA OR NATIONAL  
GUARD RESERVISTS

WHEREAS, there are currently employees of the City who are in the armed forces, naval militia or National Guard reservists who may be called to mandatory active duty to serve under the Executive Order 13223 issued on September 14, 2001; and

WHEREAS, any such employees called to such mandatory active duty and their dependents would suffer a serious economic impact as a result of loss of employment income and benefits from the City; and

WHEREAS, the City Council has taken action since 2001 to extend military leave benefits and supplemental salary to eligible employees, most recently through the adoption of Resolution No. 215-06, which extended military leave benefits and supplemental salary through June 30, 2007; and

WHEREAS, in order to minimize the impact that a call to active military duty has on the affected employees and their dependents, staff recommends continuation of these benefits for eligible employees through June 30, 2009.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT Section 3.550 of Salary Resolution No. 190-05, shall be amended as follows:

SECTION 3.550. MILITARY RESERVISTS: EXTENSION OF BENEFITS  
AND SUPPLEMENTAL SALARY.

(a) A person is eligible for the benefits established in this section if he or she meets all of the following qualifications:

- (1) Is an active probationary or regular part-time or full time employee of the City in Pay Plan Categories A, B, C, D/E, F, G, K or L.
- (2) Is a member of the Armed Forces, Naval Militia or National Guard.

(a-3)-(c) Text unchanged.

(d) All employees who receive the benefits and supplemental salary under this section will be eligible to remain covered under their current retirement, medical, dental, employee assistance and vision plans through June 30, 2009. The City will provide eligible employees, along with the supplemental

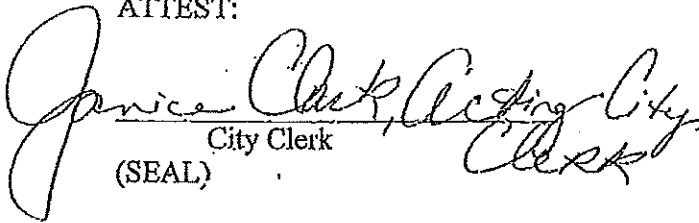
salary, the amount that the City currently contributes toward the benefits plans. If the employee is currently paying a deduction toward these plans, the employee will continue to make those payments.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT the maximum duration of the extended benefit is through June 30, 2009.

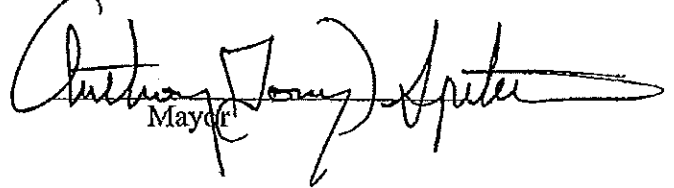
Adopted by the City Council at a regular meeting held on June 10, 2008, by the following vote:

AYES: SPITALERI, HAMILTON, HOWE, LEE, SWEGLES, MOYLAN, WHITTUM  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE

ATTEST:

  
City Clerk  
(SEAL)

APPROVED:

  
Mayor

APPROVED AS TO FORM AND LEGALITY:

  
David E. Kahn, City Attorney



3.500. **MILITARY LEAVE.** Employees assigned to active military duty are entitled to military leave in accordance with the provisions of applicable State and Federal laws and the Administrative Policy Manual as the same exists or is amended hereafter. Effective July 2003, this leave will be granted on a fiscal year basis.

3.550. **MILITARY RESERVISTS: EXTENSION OF BENEFITS AND SUPPLEMENTAL SALARY.**

(a) A person is eligible for the benefits established in this section if he or she meets all of the following qualifications:

(1) Was an active probationary or regular part-time or full-time employee of the City in Pay Plan Categories A, B, C, D/E, F, G, K or L as of September 14, 2001;

(2) Is a member of the Armed Forces, Naval Militia or National Guard as of September 14, 2001;

(3) Is called to active duty per Executive Order 13223 issued on September 14, 2001;

(4) Returns to City employment within 60 days after the end of active duty status; and

(5) Remains as an employee of the City for at least six months following his or her return to City employment.

Eligible employees will be required to sign an agreement with the City which details their rights and obligations with respect to these benefits and supplemental salary prior to their initial receipt of benefits beyond the mandatory 30 days of benefits otherwise provided by law. Employees who elect not to return to City service shall be required to repay the City for the cost of the supplementary salary and benefits plus interest at the 26-week T-bill rate at the time that the final supplementary compensation was provided and for the period that exceeded the mandatory 30 days of benefits otherwise provided by law.

(b) The City will continue to pay a bi-weekly check to eligible employees equal to base salary, plus any other compensation the employee would have received had he/she been actually working. The employee then will reimburse the City the amounts paid for military service plus allowances, including Basic Allowance for Housing.

(c) Eligible employees will be required to send copies of their military pay stubs to the Department of Human Resources for purposes of reconciliation. The payments will be

reconciled by the Payroll unit of the Accounting Division of the Department of Finance. If the Payroll unit has not received the copies within three weeks after the end of the month, future checks will be withheld until the information is provided.

(d) Through June 30, 2006, all employees receiving the benefits and supplemental salary under this section will be eligible to remain covered under their current retirement, medical, dental, employee assistance and vision plans for eligible employees for a total of 60 total pay periods after the initial 30 days' military leave are exhausted. The City will provide eligible employees, along with the supplementary salary, the amount that the City currently contributes toward the benefits plans. If the employee is currently paying a deduction toward these plans, the employee will continue to make those payments. Compensation and benefits shall be in accordance with provisions as approved by City Council.

3.600. **DISABILITY LEAVE. NONMANAGEMENT ENTITLEMENT.** Employees in Categories A, B, C and G qualify for disability leave after completion of twenty-six (26) consecutive pay periods from the date of original appointment; provided, however, that employees may be authorized up to forty (40) hours of interim disability leave from the date of employment for the first twenty-six (26) pay periods; provided, however, that at the conclusion of the twenty-sixth (26th) pay period the interim disability leave shall terminate, including any unused amount. The total allowable paid disability leave for employees in Categories A, B, C and G for work-related and non-work related disability combined is forty (40) hours.

3.610. **DISABILITY LEAVE. NONMANAGEMENT PROVISIONS.** For employees in Categories A, B, C and G, upon completion of the twenty-sixth (26th) consecutive pay periods of service, the City shall provide regular salary for disability leave, less any coverage provided by any other insurance program for the first ninety (90) calendar days of disability.

3.620. **DISABILITY LEAVE. AUTHORIZATION.** Disability leave may be authorized by Management staff in accordance with procedures set forth in the applicable MOU or Administrative Policy Manual as the same now exists or is hereafter amended.

3.625. **STATE DISABILITY INSURANCE (SDI) INCLUDING PAID FAMILY LEAVE INSURANCE (PFLI).** Category L employees are eligible as of August 1, 1996 for SDI benefits in accordance with the applicable MOA. Benefits are provided due to non-work related disability. The cost is paid by employee. SDI includes Paid Family Leave Insurance with